

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

-----X
DARRYL ORRIN BAKER,

SCANNED

Plaintiff,

VS.

UNITED STATES OF AMERICA
GOVERNMENT OFFICIALS AT FCI-MCKEAN
WARDEN, OFFICER B. WESEMEN, MEDICAL
DEPARTMENT et.al.

: CIVIL ACTION
: CASE NO.# 05-147E
: HONORABLE
: JUDGE MCLAUGHLIN

Defendant's

-----X
LEAVE TO FILE A SECOND
AMENDED COMPLAINT PURSUANT TO
F.RULES.CIV.P. 15(a)

NOW COMES, the Plaintiff DARRYL ORRIN BAKER, (hereinafter "PLAINTIFF") and proceeding pro-se, and respectfully moves this Honorable Court in the interest of justice, for Leave to File a Second Amended Complaint for the reasons that follow:

(1) The Plaintiff would add more facts against the Defendant's.

(2) That these additional facts will show that the Government employees at FCI-Mckean where negligent, and where the proximate cause of the Plaintiff's injuries.

(1)

(3) That the Plaintiff will add more Defendant's at FSL Elkton for retaliation against the Plaintiff.

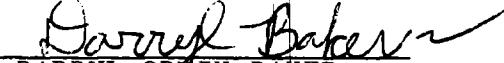
(4) That this retaliation was the result of the Plaintiff filing this complaint and also filing grievances.

CONCLUSION

Wherefore, the Plaintiff request that this Honorable Court "GRANT" the Plaintiff Leave to File a Second Amended Complaint Pursuant to Fed.R.Cir.P. 15(a), because the Plaintiff has additional facts to bring in this Honorable Court, and also, the Plaintiff has been retaliated against at FSL Elkton for Filing grievances.

Respectfully submitted

BY:


DARRYL ORKIN BAKER
Reg. No. # 19613-039
Federal Prison Camp
P.O. Box 2000
Lewisburg, PA.
17837

EXECUTED: NOVEMBER 28, 2005.

FED. RULES. CIV.P. 15(a) STANDARD

Rule 15. Amended and Supplemental Pleadings.

(a) Amendments. A party may amend the party's

Pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

See also; Federal Rules of Civil Procedure 15(a); Thinket Ink Info. v. Sun Microsystems, Inc., 368 F.3d 1053 (9th Cir.2004); Center For Biological Diversity v. Veneman, 394 F.3d 1109 (9th Cir.2005); Shane v. Fauver, 213 F.3d 113 93rd Cir.2000); Rule 15(a) of the Federal Rules of Civil Procedure permits a party to amend a pleading "once as a matter of course at any time before a responsive pleading is served." A motion to dismiss for failure to state a claim must be made "before pleading if a further pleading is permitted. Fed.R. Civ.P. 12(b). thus, in the typical case in which a defendant asserts the defense of failure to state a claim by motion, the plaintiff may amend the complaint once" as a matter of course" without leave of court. See 2 James Wm. Moore et.al., Moore's Federal Practice § 12.34 [5], at 12-76 (3d 3.1999) (quoting Fed.R.Civ.P. 15(a)).; After amending once or after an answer has been filed, the plaintiff may amend only

with leave of court or the written consent of the opposing party, but 'leave shall be freely given when justice so requires.' Fed. R.Civ.P. 15(a). The Supreme Court has instructed that although "the grant or denial of an opportunity to amend is within the discretion of the District Court,....outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely an abuse of that discretion and inconsistent with the spirit of the Federal Rules." Forman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). "Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility, . In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 93rd Cir.1997) ("Burlington"); Lorenz v. CSX. Corp., 1 F.3d 1406, 1413-14 93d Cir. 1993). "Futility" means that the complaint, as amended, would fail to state a claim upon which relief could be granted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have sent a true and exact copy of Plaintiff's Motion for Leave to File a Second Amended Complaint Pursuant to Fed.Rules.Civ.P. 15(a) VIA United States Mail this Day November 28, 2005. TO:

Assistant United States Attorney
Mary Beth Buchanan and
Paul E. Skirtich
Western District of Pennsylvania
U.S. Post Office Courthouse
700 Grant Street, Suite 400
Pittsburgh, Pennsylvania
15219

Respectfully submitted

BY:


DARRYL ORRIN BAKER
Reg. No. # 19613-039
Federal Prison Camp
P.O. Box 2000
Lewisburg, PA.
17837

EXECUTED: NOVEMBER 28, 2005.